IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL No. 73 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23/09/2004 in WP No. 25337 OF 1999 on the file of the High Court.)

Between:

K. Indrasena Reddy S/o Gopal Reddy
R/o Kukunoorpally Village, Kondapaka Madnal, Medak District.

..... APPELLANT

AND

1. The Union of India represented Deputy Secretary, Ministry of Home Affairs, Loknayak Bhavan,
(Hyderabad FF Cell), New Delhi.
2. The Government of Andhra Prudish rep by Joint Secretary to Government, Revenue (FF) Department,

Secretariat, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: Mr. A.RAJENDRA BABU

Counsel for Respondent No.1: Smt.V.Sandhya

Addl. S.C. for Central Govt.

Counsel for Respondent No.2: G.P. for Home.

The Court made the following :

ORAL JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

In this appeal, the petitioner is questioning the order of the learned Single Judge dismissing the writ petition as devoid of merit. Petitioner sought direction against respondents to declare proceedings dated: 21.10.1999 issued by the first respondent rejecting the claim of the petitioner for grant of pension under the Swatantra Sainik Samman Pension Scheme, hereinafter referred to as "the Pension Scheme", as arbitrary, illegal and violative of the scheme framed by the first respondent.

The Central Scheme for the grant of pension to freedom fighters and their families from Central Revenues was introduced by the Government of India during Twenty Fifth Anniversary (Silver Jubilee) of Independence. The scheme commenced from 15th August, 1972, and, underwent numerous changes till 31.7.1980. Freedom fighters pension was admissible only to those who were in need of financial assistance on account of their meager annual gross income. But, from August, 1980, pension was extended to all freedom fighters as a token of 'Samman' to them. The Scheme specified the eligibility of dependents besides defining as to who is a freedom fighter. Freedom fighter is described, inter alia, in the Scheme as a person who had suffered a minimum imprisonment of six months in the mainland jails before independence. The scheme also explains the term 'suffering imprisonment' that detention under the orders of the competent authority will be considered as imprisonment and further clarifies that a person who remains underground for more than six months, provided, he was one for whose detention order was issued, but, not served will also be a person having suffered the minimum imprisonment.

In the instant case, the petitioner applied for pension under the 1980 Scheme on the ground that he was a person against whom order of detention had been issued

under Rule 119 of Defence of Hyderabad Rules, but, such detention order was not served, and, pursuant to the issuance of the detention order, he remained underground for more than six months. Along with the application, a copy of the list of persons against whom detention orders have been issued, authenticated by the Section Officer, Department of Commerce and Export Promotion, Government of A.P., Hyderabad, bearing File No. U.O. Note No.36754/O.P.II/92-1, dated: 3.1.1992, was also appended. Petitioner's name is shown at Sl.No.70 of the said list. When petitioner's application was not considered, he preferred Writ Petition No. 33261 of 1998, in which direction was issued for taking appropriate decision on his application, and, ultimately, on 21.10.1999, Respondent No.1 rejected the petitioner's application on the ground that petitioner had claimed underground suffering in connection with the freedom struggle for merger of erstwhile Hyderabad State into Indian Union and had produced a copy of detention order issued by the Director-General of Police of Nizam Government vide letter No.2/Cong/56 fasli, dated: 5.12.1356 fasli together with a list of 98 accused persons in support thereof. The order further says that the documents have been scrutinized and found that they are lacking to fulfill certain conditions. It also says that the documents submitted by the petitioner shows of all the 98 persons were to be detained by the police as per the powers conferred on police department and it was not executed, warrant of arrest in the petitioner's case does not appear to have been issued by the concerned jurisdictional magistrate, as there is no warrant of arrest in detention cases, the document does not prove the required minimum period of six months' sufferance, and the personal knowledge certificate is not from the eligible certifier.

The Scheme also provided for the manner in which an applicant is required to prove his claim for pension. It says that applicant should furnish the documents indicated in the Scheme. As regards remaining underground, documentary evidence by way of courts'/Government orders proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention, is sufficient. For remaining underground, a certificate from veteran freedom fighter who had himself undergone imprisonment for five years or more, if the official records are not forthcoming due to their non- availability is sufficient. Therefore, the only document required to be produced in support of the claim of remaining underground would be in the shape of documentary evidence by way of courts'/government order

proclaiming the applicant to be a person whose detention has been ordered. Certificate from the veteran freedom fighter who had himself undergone imprisonment for five years or more, would be required only in case when the official record is not forthcoming or not available. In the instant case, there is a record available, namely, list of 98 persons against whom detention orders were issued under Rule 119 of Defence of Hyderabad Rules. The petitioner is one of them. Under the scheme, that list itself was sufficient and the application accompanied the affidavit of the petitioner and also the certificate issued by one K.Venkatram Reddy, PPO No. MHAFF9901583, certifying petitioner's claim to be correct. Nothing else was required to be submitted or proved by the petitioner. Therefore, the order rejecting the claim is for irrelevant and extraneous reasons and is liable to be set aside. Consequently, we allow the Writ Appeal, set aside the order impugned in the Writ Appeal and also the order impugned in the writ petition and allow the writ petition with direction to Respondent No.1 to consider the prayer for grant of pension to the petitioner-appellant. Appropriate decision be taken within a period of three months from the date of the receipt of the writ order from this court. No costs.

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DEVINDER GUPTA, C.J.

18.2.2005.

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B.SESHASAYANA REDDY, J.

VR.

To

1. The Deputy Secretary to Government of India,

Ministry of Home Affairs, Loknayak Bhavan,
(Hyderabad FF Cell), New Delhi.
2. The Joint Secretary to Government of Andhra Prudish, Revenue (FF) Department,

Secretariat, Hyderabad.

3. Two CCs to Government Pleader for Home, High Court Buildings, Hyderabad (OUT).

4. Two CD copies.